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ATTN Michael McMains

June 21, 2007

Ex Parte Presentation

Via Electronic Submission

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street S.W.
Washington, DC 20554

Re: *Amendment of the Commission's Part 90 Rules in the 904-909.75 and 919.75-928 MHz Bands*, WT Docket 06-49

Dear Ms. Dortch,

Progeny LMS, LLC ("Progeny") responds to the letter dated June 19, 2007, by Mark B. Leahey on behalf of the Medical Device Manufacturers Association ("MDMA Letter.")[1]

Progeny is naturally concerned that all medical telemetry devices have interference protection. To the extent that the medical devices highlighted in MDMA's letter operate as Industrial, Scientific and Medical ("ISM") devices, they are already protected.[2] Progeny's proposals do not intend to alter this protection.

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[1] Medical Device Manufacturers Association, In the matter of Amendments of the Commission's Part 90 Rules in the 904-909.75 and 919.75-928 MHz bands, *Letter*, WT Docket 06-49, filed June 19, 2007.

[2] Amendment of the Commission's Part 90 Rules in the 904-909.75 and 919.75-928 MHz Bands, *Notice of Proposed Rulemaking*, WT Docket 06-49, released March 7, 2006 ("NPRM"). The NPRM noted "this band is allocated on a primary basis to federal radiolocation systems and Industrial, Scientific, and Medical (ISM) equipment. Federal fixed and mobile services are allocated on a secondary basis to federal radiolocation systems and ISM equipment. LMS licensees are allocated on a secondary basis to federal users and ISM devices and may not cause interference to and must tolerate interference from these users and devices." The NPRM stated

Regarding other devices, Progeny knows the Commission shares its concern because in June of 2000 the FCC allocated 14 MHz to the Wireless Medical Telemetry Service (WMTS)[3] and has proposed adding 2 MHz to the existing 3 MHz in the Medical Implant Communications Service (MICS).[4]

However, Progeny notes that the FCC created the WMTS precisely to replace unlicensed operation under Part 15. The Commission did not find extensive use of these bands:

> A small number of medical telemetry devices operate in the Industrial, Scientific and Medical (ISM) bands under provisions in Part 15 of the rules...[5]

While the Commission did not prohibit future use of the band for medical devices, it did say:

> We expect that the majority of medical telemetry equipment manufacturers will design equipment for the new bands allocated in this proceeding, and that only a small number of devices will continue to use the ISM bands. ... While such operation will be permissible, manufacturers and users are cautioned that equipment operating in these bands has no protection from interference from ISM equipment operating under Part 18 of the rules or other low power transmitters operating under Part 15 of the rules.[6]

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that the FCC did not "seek to alter the rules that govern the relationship among the various federal and non-federal licensed services in this band." Progeny has told the FCC it agrees with this conclusion.

[3] In the Matter of Amendment of Parts 2 and 95 of the Commission's Rules to Create a Wireless Medical Telemetry Service*, Report and Order*, ET Docket 99-255, PR Docket 92-235, released June 12, 2000 ("WMTS Order"). The bands are 608-614, 1395-1400 and 1429-1432 MHz.

[4] In the Matter of Investigation of the Spectrum Requirements for Advanced Medical Technologies, *Notice of Proposed Rulemaking, Notice of Inquiry and Order*, ET Docket 06-135, RM -11271, ET Docket 05-213, ET Docket 03-92. That is, from the current allocation of 402-405 MHz to 401-406 MHz. The rulemaking also proposes relaxations to operating rules in the band to permit so-called low-power, low duty-cycle devices.

[5] *WMTS Order*, ¶66. This statement includes all the ISM bands, including 2.4 GHz and 5.8 GHz, and not just 902-928 MHz.

[6] Id. ¶67.

To reinforce the FCC's warning, the Center for Devices and Radiological Health of the Food and Drug Administration (FDA) issued a Public Health Advisory one month later, in July 2000. Addressed to hospital administrators, nursing home managers and others in the health care field, it said:

> ... *your existing wireless medical telemetry systems may be at increased risk of electromagnetic interference (EMI) if they continue to operate in the range of frequencies in which most medical telemetry devices are currently operating*. To address this risk, the Federal Communications Commission (FCC) has created a new Wireless Medical Telemetry Service (WMTS) that will allow medical telemetry systems to operate on an interference-protected basis. We recommend that you evaluate whether your medical telemetry systems are at risk and take appropriate measures to reduce that risk. **We believe that the best way to accomplish this is to use telemetry systems operating in the new WMTS frequency bands.** [italics added, boldface emphasis in original][7]

To summarize:

- The FCC found the 902-928 MHz band to be little-used by medical devices in 2000.
- Nevertheless, the Commission allocated 14 MHz so that medical wireless telemetry could operate on an interference-protected basis.
- At the time, both the FCC and the FDA warned the public that there might be increased risk of using the existing bands and urged them to move to the WMTS.
- Seven years have now passed, and it is reasonable to assume that usage of the 900 MHz band has only gotten even lower over time.
- In view of the public warnings, it is also reasonable to expect new products, whether developed by large companies or small ones, to use the WMTS and MICS bands.

In view of these points, Progeny submits that its proposed flexibility for Multilateration Location and Monitoring Service licensees would not reasonably appear to be the root of any potential interference problems.[8] Progeny once again

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[7] *Risk of Electromagnetic Interference with Medical Telemetry Systems*, July 10, 2000, signed by David W. Feigal, Jr., MD, MPH, Director, Center for Devices and Radiological Health. See: http://www.fda.gov/cdrh/safety/emimts.html visited June 20, 2007.

[8] See *LMS Compatibility with Part 15 Devices: The Case for Spectrum Flexibility*, A White Paper, submitted as an attachment to Letter from Progeny LMS, LLC to

calls upon the FCC to finally issue rules that will allow Progeny and other licensees to serve the public.

In accordance with Section 1.1206(b) of the Commission's Rules, this letter is being filed with your office. Should you have any questions or concerns in connection with this submission, please contact me at +1 (703) 623-6884 (mobile) or by email at CAgnew@ProgenyLMS.com.

Marlene H. Dortch, Secretary, FCC (Oct. 8, 2002). See also *902-928 MHz Spectrum Utilization Study,* submitted as an attachment to Comments of Progeny LMS, LLC in FCC WT Docket No. 06-49 (filed Mar. 14, 2007).

Sincerely,

Carson Agnew
President
Progeny LMS, LLC

Cc: Fred Campbell, Chief, WTB
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